

Message Text

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DEPARTMENT: PLEASE PASS JUSTICE FOR PROPPER

E.O. 11652: N/A
TAGS: PGOV, SHUM, CI
SUBJECT: LETELIER/MOFFITT CASE: "MERCURIO" LOOKS AT JURIDICAL
ASPECTS

1. SUMMARY: TAKING A LOOK AT THE CHILEAN AND U.S. LEGAL
SYSTEMS, "EL MERCURIO" AUGUST 6 EXPLAINS THE PROCEDURE FOR
HANDLING EXTRADITION REQUESTS. THE FATE OF THOSE REQUESTS
WILL BE DETERMINED, AT LEAST PARTIALLY SUGGESTS "MERCURIO",
BY HOW WELL THE USG IS ABLE TO TAKE ACCOUNT OF THE DIFFERENCES
BETWEEN THE RULES OF EVIDENCE AND INVESTIGATORY PROCEDURES
OF THE TWO COUNTRIES. TO JUDGE BY "MERCURIO'S" ACCOUNT,
A DECISION COULD TAKE MONTHS. END SUMMARY.

2. CHILEAN EXTRADITION PROCEDURES. UNDER CHILEAN LAW,
REQUESTS FOR EXTRADITION ARE HANDLED BY THE SUPREME COURT.
THE COURT PRESIDENT ALONE BECOMES THE COURT OF FIRST INSTANCE.
AS NOTED BY "MERCURIO", UPON RECEIPT OF THE EXTRADITION
REQUEST WITH ACCOMPANYING EVIDENCE, HE CONDUCTS THE NECESSARY
INQUIRY DESIGNED TO: ESTABLISH IDENTITY OF THE ACCUSED;
DETERMINE IF THE CRIMES CHARGED FIGURE ON THE LIST OF
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CRIMES COVERED BY THE PERTINENT EXTRADITION TREATY; AND
DETERMINE WHETHER OR NOT THOSE INDICTED COMMITTED THE
CRIMES CHARGED. THIS LAST CHORE IS THE MOST IMPORTANT.
"MERCURIO" FORESEES A "FORENSIC BATTLE" AT THIS POINT
BETWEEN THE LAWYER (ETCHEBERRY) AND THE ATTORNEY(S)
REPRESENTING THE DEFENDANTS. THE COURT PRESIDENT RESERVES
THE RIGHT TO INTERROGATE THE THREE INDICTED (CONTRERAS,

ESPINOZA, FERNANDEZ) HIMSELF -- BOTH AS TO THEIR IDENTITY AND TO THEIR PARTICIPATION IN THE CRIMES. THE THREE IN TURN CAN ASK THAT OTHER WITNESSES IN CHILE BE CALLED TO TESTIFY IN SUPPORT OF THEIR CASES. ONCE THE INVESTIGATION IS COMPLETED, THE COURT PRESIDENT ALLOWS A "PRUDENT AND ESTENDABLE" PERIOD OF TIME FOR THE USG ATTORNEY TO SUBMIT WRITTEN ARGUMENTS. HE THEN DOES THE SAME FOR THE DEFENSE LAWYERS. ONCE BOTH SIDES TURN IN THEIR WRITTEN PRESENTATIONS, THE COURT PRESIDENT HANDS OVER ALL PAPERS TO A SUPREME COURT LAWYER (FISCAL), WHO "IN ACCORD WITH TEATIES AND PRINCIPLES OF INTERNATIONAL LAW", PREPARES A REPORT RECOMMENDING APPROVAL OR DISAPPROVAL OF THE EXTRADITION REQUEST. THE COURT PRESIDENT TAKES THE REPORT AND HAS FIVE DAYS (WHICH IS NEVER SUFFICIENT TIME AND CONSEQUENTLY IGNORE, OBSERVES "MERCURIO") WITHIN WHICH TO RENDER HIS VERDIT ON EXTRADITION. ONCE RENDERED, THE DECISION GOES TO A PANEL OF SUPREME COURT JUSTICES FOR REVIEW.

3. THIS PANEL BECOMES THE COURT OF SECOND INSTANCE AND COMMENCES THE FINAL JUDICIAL PHASE WHICH, LIKE THE FIRST, IS PUBLIC. THE EVIDENCE ACCUMULATED REMAINS IN THE HANDS OF A SUPREME COURT OFFICIAL. THIS ORAL PRESENTATION IS FOLLOWED BY PRESENTATIONS OF ATTORNEYS REPRESENTING BOTH SIDES. AFTER ALL ARGUMENTS HAVE BEEN HEARD, THE JUSTICES TAKE THE TIME NEEDED (SOMETIMES MONTHS) TO REACH A DECISION SUSTAINING OR OVERTURNING THAT OF THE COURT PRESIDENT. "MERCURIO" MENTIONS EN EXAMPLE IN LIMITED OFFICIAL USE

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THE RECENT PAST WHERE THE COURT OVERTURNED A SUPREME COURT PRESIDENT'S DECISION TO EXTRADITE.

4. TWO DIFFERENT LEGAL SYSTEMS. ACCORDING TO "EL MERCURIO", EXTRADITION IS COMPLICATED BY THE FACT THAT TWO SOMEWHAT DIFFERENT PENAL SYSTEMS ARE IN PLAY. IN THE U.S., THE GRAND JURY HAS ULTIMATE RESPONSIBILITY FOR DRAFTING CHARGES, WHILE RELYING PRIMARILY ON THE U.S. ATTORNEY TO CONDUCT THE ACTUAL INVESTIGATION. IN CHILE, AN "IMPARTIAL" CRIMINAL COURT JUDGE BOTH INVESTIGATES THE CRIME AND METES OUT JUSTICE. THE DEFENDANT IN THE U.S. IS ALLOWED TO PLEA-BARGAIN, PLEADING GUILTY TO A LESSER CHARGE (THEREBY BECOMING ELIGIBLE FOR A LESSER SENTENCE); IN CHILE NO SUCH PRACTICE IS ALLOWED.

5. RULES OF EVIDENCE ARE DIFFERENT, WITH THE CHILEAN SYSTEM DRAWING A DISTINCTION BETWEEN WHAT IS SAID ("SO AND SO ORDERED ME", FOR EXAMPLE) AND WHAT COMES OUT IN THE COURSE OF THE INVESTIGATION (SO AND SO STAYED AT HOTEL X, THE EXPLOSIVES WERE PURCHASES AT PLACE Y, ETC.). THE CHILEANS CONSIDER THE FORMER TO HAVE SOME WEIGHT IN DRAWING UP AN INDICTMENT, BUT NOT SO IN THE

TRIAL OR SENTENCING PHASES. AT LEAST TWO WITNESSES
ARE NEEDED TO PIN THE GOODS ON THE DEFENDANT AND THE
JUDGE MUST NOT MERELY PERSONALLY BELIEVE THE DEFENDANT
IS GUILTY; HE MUST BE CONVINCED BY THE RULES OF EVIDENCE
ESTABLISHED UNDER CHILEAN LAW. THE CHARGE OF CONSPIRACY
TO MURDER IS NOT IN ITSELF AN OFFENSE IN CHILE. CONSPIRACY
IS VIEWED AS PART OF THE DEED -- MURDER -- AND IS NOT
TREATED SEPARATELY.

6. COMMENT: THE MESSAGE THAT COMES THROUGH MOST CLEARLY
IN THIS EXPLANATION OF HOW EXTRADITION REQUESTS ARE
HANDLED UNDER CHILEAN LAW AND PROCEDURES IS THAT THE
PROCESS CAN TAKE A SUBSTANTIAL AMOUNT OF TIME. USG
LAWYER ALFREDO ETCHEBERRY INFORMS US THAT THE ACCOUNT
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IS BASICALLY ACCURATE.
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